II

107TH CONGRESS
1ST SESSION

S. 1346

To amend the Federal Food, Drug, and Cosmetic Act with regard to new animal drugs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 2, 2001

Mr. SESSIONS (for himself, Mr. BINGAMAN, Mr. ALLARD, and Ms. COLLINS) introduced the following bill; which was read twice and referred to the Committee on Finance

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A BILL

To amend the Federal Food, Drug, and Cosmetic Act with regard to new animal drugs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Minor Use and Minor Species Animal Health Act of 2001''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) There is a severe shortage of approved new animal drugs for use in minor species.

(2) There is a severe shortage of approved new animal drugs for treating animal diseases and conditions that occur infrequently or in limited geographic areas.

(3) Because of the small market shares, low-profit margins involved, and capital investment required, it is generally not economically feasible for new animal drug sponsors to pursue approvals for these species, diseases, and conditions.

(4) Because the populations for which such new animal drugs are intended may be small and conditions of animal management may vary widely, it is often difficult to design and conduct studies to establish drug safety and effectiveness under traditional new animal drug approval processes.

(5) It is in the public interest and in the interest of animal welfare to provide for special procedures to allow the lawful use and marketing of certain new animal drugs for minor species and minor uses that take into account these special circumstances and that ensure that such drugs do not endanger animal or public health.

(6) Exclusive marketing rights and tax credits for clinical testing expenses have helped encourage the development of 'orphan' drugs for human use,

and comparable incentives should encourage the development of new animal drugs for minor species and minor uses.

SEC. 3. AMENDMENTS TO THE FEDERAL FOOD, DRUG, AND COSMETIC ACT.

(a) DEFINITIONS.—Section 201 of the Federal, Food, Drug, and Cosmetic Act (21 U.S.C. 321) is amended by adding at the end the following:

''(kk) The term 'major species' means cattle, horses, swine, chickens, turkeys, dogs, and cats, except that the Secretary may revise this definition by regulation.

''(ll) The term 'minor species' means animals other than humans that are not major species.

''(mm) The term 'minor use' means the intended use of a drug in a major species for an indication that occurs infrequently or in limited geographical areas.''.

(b) THREE-YEAR EXCLUSIVITY FOR MINOR USE AND MINOR SPECIES APPROVALS.—Section 512(c)(2)(F) (ii), (iii), and (v) of the Federal Food, Drug, and Cosmetic Act is amended by striking ''(other than bioequivalence or residue studies)'' and inserting ''(other than bioequivalence studies or final residue depletion studies, except final residue depletion studies for minor uses or minor species)'' every place it appears.

(c) SCOPE OF REVIEW FOR MINOR USE AND MINOR SPECIES APPLICATIONS.—Section 512(d) of the Federal Food, Drug, and Cosmetic Act is amended by adding at the end the following new paragraph:

''(5) In reviewing an application that proposes a change to add an intended use for a minor use or a minor species to an approved new animal drug application, the Secretary shall reevaluate only the relevant information in the approved application to determine whether the application for the minor use or minor species can be approved. A decision to approve the application for the minor use or minor species is not, implicitly or explicitly, a reaffirmation of the approval of the original application.''.

(d) MINOR USE AND MINOR SPECIES NEW ANIMAL DRUGS.—Chapter V of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351 et seq.) is amended by adding at the end the following:

''Subchapter F—New Animal Drugs For Minor Use And Minor Species

''SEC. 571. CONDITIONAL APPROVAL OF NEW ANIMAL DRUGS FOR MINOR USE AND MINOR SPECIES.

''(a)(1) Except as provided in paragraph (3) of this section, any person may file with the Secretary an application for conditional approval of a new animal drug in-

tended for a minor use or a minor species. Such an application may not be a supplement to an application approved under section 512. Such application must comply in all respects with the provisions of section 512 of this Act except 512(b)(2), 512(c)(1), 512(c)(2), 512(c)(3), 512(d)(1), 512(e), 512(h), and 512(n) unless otherwise stated in this section, and any additional provisions of this section.

''(2) The applicant shall submit to the Secretary as part of an application for the conditional approval of a new animal drug—

''(A) all information necessary to meet the requirements of section 512(b)(1) except 512(b)(1)(A);

''(B) full reports of investigations which have been made to show whether or not such drug is safe and there is a reasonable expectation of effectiveness for use;

''(C) data for establishing a conditional dose;

''(D) projections of expected need and the justification for that expectation based on the best information available;

''(E) information regarding the quantity of drug expected to be distributed on an annual basis to meet the expected need; and

''(F) a commitment that the applicant will conduct additional investigations to meet the requirements for the full demonstration of effectiveness under section 512(d)(1)(E) within 5 years.

''(3) A person may not file an application under paragraph (1) if without adequate justification—

''(A) the person has previously filed an application for conditional approval under paragraph (1) for the same drug, conditions of use, and dosage form whether or not subsequently conditionally approved by the Secretary under subsection (b), or

''(B) the person obtained the application, or data or other information contained therein, directly or indirectly from the person who filed for conditional approval under paragraph (1) for the same drug and conditions of use whether or not subsequently conditionally approved by the Secretary under subsection (b).

''(b) Within 180 days after the filing of an application pursuant to subsection (a), or such additional period as may be agreed upon by the Secretary and the applicant, the Secretary shall either—

''(1) issue an order, effective for one year, conditionally approving the application if the Secretary finds that none of the grounds for denying condi-

tional approval, specified in subsection (c) of this section applies, or

''(2) give the applicant notice of an opportunity for an informal hearing on the question whether such application can be conditionally approved.

''(c) If the Secretary finds, after giving the applicant notice and an opportunity for an informal hearing, that—

''(1) any of the provisions of section 512(d)(1)(A) through (D) or (F) through (I) are applicable;

''(2) the information submitted to the Secretary as part of the application and any other information before the Secretary with respect to such drug, is insufficient to show that there is a reasonable expectation that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the proposed labeling thereof; or

''(3) another person has received approval under section 512 for a drug with the same active ingredient or ingredients, the same conditions of use, and the same dosage form and that person is able to assure the availability of sufficient quantities of the drug to meet the needs for which the drug is intended;

the Secretary shall issue an order refusing to conditionally approve the application. If, after such notice and opportunity for an informal hearing, the Secretary finds that subparagraphs (1) through (3) do not apply, the Secretary shall issue an order conditionally approving the application effective for one year. Any order issued under this subsection refusing to conditionally approve an application shall state the findings upon which it is based.

''(d) A conditional approval under this section is effective for a 1-year period and is thereafter renewable by the Secretary annually for up to 4 additional 1-year terms. A conditional approval shall be in effect for no more than 5 years from the date of approval under subsections (b)(1) or (c) of this section unless extended as provided for in subsection (h) of this section. The following shall also apply:

''(1) No later than 90 days from the end of the 1-year period for which the original or renewed conditional approval is effective, the applicant may submit a request to renew a conditional approval for an additional 1-year term.

''(2) If the renewal request is submitted no later than 90-days from the end of the 1-year period, a conditional approval shall be deemed renewed at the end of the 1-year period, or at the end of an

additional 90-day extension when deemed necessary to complete review of an application, unless the Secretary makes a written determination before the expiration of the 1-year period or the 90-day extension that—

"(A) the request fails to contain sufficient information to show that—

"(i) the applicant is making sufficient progress toward meeting approval requirements under section 512(d)(1)(E), and is likely to be able to fulfill those requirements and obtain an approval under section 512 before the expiration of the 5-year maximum term of the conditional approval;

"(ii) the quantity of the drug that has been distributed is consistent with the intended use, unless there is adequate explanation that ensures that the drug is only used for its intended purpose; or

"(iii) no other drug with the same active ingredient or ingredients, for the same conditions of use, and dosage form has received approval under section 512, or if such a drug has been approved, that the holder of the approved application is un-

able to assure the availability of sufficient quantities of the drug to meet the needs for which the drug is intended; or

"(B) 1 or more of the conditions of subsection 512(e)(1)(A) through (B) and (D) through (F) are met.

"(3) If the Secretary makes a timely written determination that a conditional approval should not be renewed, or the applicant fails to submit a timely renewal request, the Secretary shall issue an order refusing to renew the conditional approval, and such conditional approval shall be deemed withdrawn and no longer in effect. The Secretary shall thereafter provide an opportunity for an informal hearing to the applicant on the issue whether the conditional approval shall be reinstated.

"(e)(1) The Secretary shall issue an order withdrawing conditional approval of an application filed pursuant to subsection (a) if the Secretary finds that another person has received approval under section 512 for a drug with the same active ingredient or ingredients, the same conditions of use, and dosage form, and that person is able to assure the availability of sufficient quantities of the drug to meet the needs for which the drug is intended.

''(2) The Secretary shall, after due notice and opportunity for an informal hearing to the applicant, issue an order withdrawing conditional approval of an application filed pursuant to subsection (a) if the Secretary finds that—

''(A) any of the provisions of section 512(e)(1)(A) through (B) or (D) through (F) are applicable; or

''(B) on the basis of new information before the Secretary with respect to such drug, evaluated together with the evidence available to the Secretary when the application was conditionally approved, that there is not a reasonable expectation that such drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling thereof;

''(3) The Secretary may also, after due notice and opportunity for an informal hearing to the applicant, issue an order withdrawing conditional approval of an application filed pursuant to subsection (a) if the Secretary finds that any of the provisions of section 512(e)(2) are applicable.

''(f)(1) The label and labeling of a new animal drug with a conditional approval under this section shall—

''(A) bear the statement, ''conditionally approved by FDA pending a full demonstration of effectiveness under application number''; and

''(B) contain such other information as prescribed by the Secretary.

''(2) An intended use that is the subject of a conditional approval under this section shall not be included in the same product label with any intended use approved under section 512.

''(g) A conditionally-approved new animal drug application may not be amended or supplemented to add indications for use.

''(h) 180 days prior to the termination date established under subsection (d)(1) of this section, a sponsor shall have submitted all the information necessary to support a complete new animal drug application in accordance with section 512(b)(1) or the conditional approval issued under this section is no longer in effect. Upon receipt of this information, the Secretary shall either—

''(1) issue an order approving the application if the Secretary finds that none of the grounds for denying approval specified in 512(d)(1) applies, or

''(2) give the sponsor an opportunity for a hearing before the Secretary under 512(d) on the question whether such application can be approved. Upon

issuance of an order approving the application, product labeling and administrative records of approval shall be modified accordingly. If the Secretary has not issued an order under section 512(c) approving such application prior to the termination date established under subsection (d)(1) of this section, the conditional approval issued under this section is no longer in effect unless the Secretary grants an extension of an additional 180-day period so that the Secretary can complete review of the application. The decision to grant an extension is committed to Agency discretion and not subject to judicial review.

''(i) The decision of the Secretary under subsections (c), (d), or (e) of this section, refusing or withdrawing conditional approval of an application shall constitute final agency action subject to judicial review.

''SEC. 572. INDEX OF LEGALLY-MARKETED UNAPPROVED NEW ANIMAL DRUGS FOR MINOR SPECIES.

''(a) The Secretary shall establish an index of unapproved minor species new animal drugs that may be lawfully marketed for use in minor species. The index shall be limited to—

''(1) new animal drugs intended for use in a minor species for which there is a reasonable cer-

tainty that the animal or edible products from the animal will not be consumed by humans, and

''(2) new animal drugs intended for use in an early life stage of a food-producing minor species where human food safety can be demonstrated in accordance with the standard of section 512(d) by showing that—

''(A) there is no significant likelihood that harmful residues will be present in the animal presented as food for humans as a result of treatment at the early life stage;

''(B) there is no significant likelihood that harmful residues will be present in the animal presented as food for food-producing animals as a result of treatment at the early life stage; and

''(C) there are no concerns about the use of the drug at later life stages because a tolerance and regulatory method to test for the drug at later life stages are available or there is no practical use for the drug in later life stages.

''(b) Any person intending to file a request under this section shall be entitled to one or more conferences to discuss the requirements for indexing a new animal drug.

''(c)(1) Any person may submit a request to the Secretary for a determination whether a new animal drug

may be eligible for inclusion in the index. Such a request shall include—

''(A) information regarding the need for the new animal drug, the species for which the new animal drug is intended, the proposed intended use and conditions of use, and anticipated annual distribution;

''(B) information to support the conclusion that the proposed use meets the conditions of subsections (a)(1) or (a)(2) of this section;

''(C) information regarding the components and composition of the new animal drug;

''(D) a description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such new animal drug;

''(E) an environmental assessment or information to support a categorical exclusion from the requirement to prepare an environmental assessment;

''(F) information sufficient to support the conclusion that the proposed use of the new animal drug does not present a threat to the safety of individuals exposed to the new animal drug through its manufacture or use; and

''(G) such other information as the Secretary may deem necessary to make this eligibility determination.

''(2) Within 90 days after the submission of a request for a determination of eligibility for indexing based on paragraph (a)(1) of this section, or 180 days for a request submitted based on paragraph (a)(2) of this section, the Secretary shall grant or deny the request, and notify the person who requested such determination of the Secretary's decision. The Secretary shall grant the request if the Secretary finds that—

''(A) no new animal drug, including the same active ingredient or any salt or ester thereof is approved or conditionally approved in the same dosage form for the same intended use;

''(B) the proposed use does not raise concerns related to safety; and

''(C) the person requesting the determination has established appropriate specifications for the manufacture and control of the new animal drug and has demonstrated an understanding of the requirements of current good manufacturing practices.

If the Secretary denies the request, the Secretary shall thereafter provide due notice and an opportunity for an informal conference. The decision of the Secretary fol-

lowing an informal conference shall constitute final agency action subject to judicial review.

''(d)(1) With respect to a new animal drug for which the Secretary has made a determination of eligibility under subsection (b), the person who made such a request may ask that the Secretary add the new animal drug to the index established under subsection (a). The request for addition to the index shall include—

''(A) a copy of the Secretary's determination of eligibility issued under subsection (b);

''(B) a written report that meets the requirements in subparagraph (d)(2) of this section;

''(C) a proposed index entry;

''(D) facsimile labeling;

''(E) anticipated annual distribution of the new animal drug;

''(F) a written commitment to manufacture the new animal drug according to current good manufacturing practices;

''(G) a written commitment to label, distribute, and promote the new animal drug only in accordance with the index entry;

''(H) upon specific request of the Secretary, information submitted to the expert panel described in subparagraph (3); and

''(I) any additional requirements that the Secretary may prescribe by general regulation or specific order.

''(2) The report required in subparagraph (1) shall:

''(A) be authored by a qualified expert panel;

''(B) include an evaluation of all available target animal safety and effectiveness information, including anecdotal information;

''(C) State the expert panel's opinion regarding whether the benefits of using the new animal drug for the proposed use in a minor species outweigh its risks, taking into account the harm being caused by the absence of an approved or conditionally-approved new animal drug for the minor species in question;

''(D) include information upon which labeling can be written; and

''(E) include a recommendation regarding whether the new animal drug should be limited to use under the professional supervision of a licensed veterinarian.

''(3) A qualified expert panel, as used in this section, is a panel that—

''(A) is composed of experts qualified by scientific training and experience to evaluate the target

animal safety and effectiveness of the new animal drug under consideration;

''(B) operates external to FDA; and

''(C) is not subject to the Federal Advisory Committee Act, 5 U.S.C. App. 2.

The Secretary shall define the criteria for selection of a qualified expert panel and the procedures for the operation of the panel by regulation.

''(4) Within 180 days after the receipt of a request for listing a new animal drug in the index, the Secretary shall grant or deny the request. The Secretary shall grant the request if the request for indexing continues to meet the eligibility criteria in subsection (a) and the Secretary finds, on the basis of the report of the qualified expert panel and other information available to the Secretary, that the benefits of using the new animal drug for the proposed use in a minor species outweigh its risks, taking into account the harm caused by the absence of an approved or conditionally-approved new animal drug for the minor species in question. If the Secretary denies the request, the Secretary shall thereafter provide due notice and the opportunity for an informal conference. The decision of the Secretary following an informal conference shall constitute final agency action subject to judicial review.

''(e)(1) The index established under subsection (a) shall include the following information for each listed drug—

''(A) the name and address of the person who holds the index listing;

''(B) the name of the drug and the intended use and conditions of use for which it is being indexed;

''(C) product labeling; and

''(D) conditions and any limitations that the Secretary deems necessary regarding use of the drug.

''(2) The Secretary shall publish the index, and revise it periodically.

''(3) The Secretary may establish by regulation a process for reporting changes in the conditions of manufacturing or labeling of indexed products.

''(f)(1) If the Secretary finds, after due notice to the person who requested the index listing and an opportunity for an informal conference, that—

''(A) the expert panel failed to meet the requirements as set forth by the Secretary by regulation;

''(B) on the basis of new information before the Secretary, evaluated together with the evidence

available to the Secretary when the new animal drug was listed in the index, the benefits of using the new animal drug for the indexed use do not outweigh its risks;

''(C) the conditions of subsection (c)(2) of this section are no longer satisfied;

''(D) the manufacture of the new animal drug is not in accordance with current good manufacturing practices;

''(E) the labeling, distribution, or promotion of the new animal drug is not in accordance with the index entry;

''(F) the conditions and limitations of use associated with the index listing have not been followed; or

''(G) the request for indexing contains any untrue statement of material fact;

the Secretary shall remove the new animal drug from the index. The decision of the Secretary following an informal conference shall constitute final agency action subject to judicial review.

''(2) If the Secretary finds that there is a reasonable probability that the use of the drug would adversely affect the health of humans or other animals, the Secretary may:

''(A) suspend the listing of such drug immediately;

''(B) give the person listed in the index prompt notice of the Secretary's action; and

''(C) afford that person the opportunity for an informal conference.

The decision of the Secretary following an informal conference shall constitute final agency action subject to judicial review.

''(g) For purposes of indexing new animal drugs under this section, to the extent consistent with the public health, the Secretary shall promulgate regulations for exempting from the operation of section 512 minor species new animal drugs and animal feeds bearing or containing new animal drugs intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of minor species animal drugs. Such regulations may, at the discretion of the Secretary, among other conditions relating to the protection of the public health, provide for conditioning such exemption upon the establishment and maintenance of such records, and the making of such reports to the Secretary, by the manufacturer or the sponsor of the investigation of such article, of data (including but not limited to analytical reports by investigators) obtained as a result

of such investigational use of such article, as the Secretary finds will enable the Secretary to evaluate the safety and effectiveness of such article in the event of the filing of a request for an index listing pursuant to this section.

''(h) The labeling of a new animal drug that is the subject of an index listing shall state, prominently and conspicuously—

''(1) NOT APPROVED BY FDA.—Legally marketed as an FDA indexed product. Extra-label use is prohibited.'';

''(2) except in the case of new animal drugs indexed for use in an early life stage of a food producing animal, ''This product is not to be used in animals intended for use as food for humans or other animals.''; and

''(3) such other information as may be prescribed by the Secretary in the index listing.

''(i)(1) In the case of any new animal drug for which an index listing pursuant to subsection (a) is in effect, the person who has an index listing shall establish and maintain such records, and make such reports to the Secretary, of data relating to experience, and other data or information, received or otherwise obtained by such person with respect to such drug, or with respect to animal feeds bearing or containing such drug, as the Secretary may by

general regulation, or by order with respect to such listing, prescribe on the basis of a finding that such records and reports are necessary in order to enable the Secretary to determine, or facilitate a determination, whether there is or may be ground for invoking subsection (f). Such regulation or order shall provide, where the Secretary deems it to be appropriate, for the examination, upon request, by the persons to whom such regulation or order is applicable, of similar information received or otherwise obtained by the Secretary.

''(2) Every person required under this subsection to maintain records, and every person in charge or custody thereof, shall, upon request of an officer or employee designated by the Secretary, permit such officer or employee at all reasonable times to have access to and copy and verify such records.

''(j)(1) Safety and effectiveness data and information which has been submitted in support of a request for a new animal drug to be indexed under this section and which has not been previously disclosed to the public shall be made available to the public, upon request, unless extraordinary circumstances are shown—

''(A) if no work is being or will be undertaken to have the drug indexed in accordance with the request,

''(B) if the Secretary has determined that such drug cannot be indexed and all legal appeals have been exhausted,

''(C) if the indexing of such drug is terminated and all legal appeals have been exhausted, or

''(D) if the Secretary has determined that such drug is not a new animal drug.

''(2) Any request for data and information pursuant to paragraph (1) shall include a verified statement by the person making the request that any data or information received under such paragraph shall not be disclosed by such person to any other person—

''(A) for the purpose of, or as part of a plan, scheme, or device for, obtaining the right to make, use, or market, or making, using, or marketing, outside the United States, the drug identified in the request for indexing; and

''(B) without obtaining from any person to whom the data and information are disclosed an identical verified statement, a copy of which is to be provided by such person to the Secretary, which meets the requirements of this paragraph.

''SEC. 573. DESIGNATED NEW ANIMAL DRUGS FOR MINOR USE OR MINOR SPECIES.

''(a) DESIGNATION.—

''(1) The manufacturer or the sponsor of a new animal drug for a minor use or use in a minor species may request that the Secretary declare that drug a 'designated new animal drug'. A request for designation of a new animal drug shall be made before the submission of an application under section 512(b) or section 571 for the new animal drug.

''(2) The Secretary may declare a new animal drug a 'designated new animal drug' for an intended use if—

''(A) it is intended for a minor use or use in a minor species; and

''(B) a new animal drug containing the same active ingredient, including any salt or ester of the active ingredient, for the same intended use, in the same species, and in the same dosage form is not approved under section 512 or section 571 or designated for the intended use at the time the request is made.

''(3) Regarding the termination of a designation—

''(A) the sponsor of a new animal drug shall notify the Secretary of any decision to discontinue active pursuit of approval under sections 512 or 571 of an application for a des-

ignated new animal drug. The Secretary shall terminate the designation upon such notification;

"(B) the Secretary may also terminate designation if the Secretary independently determines that the sponsor is not actively pursuing approval under sections 512 or 571 with due diligence;

"(C) the sponsor of an approved designated new animal drug shall notify the Secretary of any discontinuance of the manufacture of such new animal drug at least one year before discontinuance. The Secretary shall terminate the designation upon such notification; and

"(D) the designation shall terminate upon the expiration of any applicable exclusivity period under subsection (c).

"(4) Notice respecting the designation or termination of designation of a new animal drug shall be made available to the public.

"(b) GRANTS AND CONTRACTS FOR DEVELOPMENT OF DESIGNATED NEW ANIMAL DRUGS.—

"(1) The Secretary may make grants to and enter into contracts with public and private entities

and individuals to assist in defraying the costs of qualified safety and effectiveness testing expenses and manufacturing expenses incurred in connection with the development of designated new animal drugs.

''(2) For purposes of subsection (1) of this section—

''(A) The term ''qualified safety and effectiveness testing'' means testing—

''(i) which occurs after the date such new animal drug is designated under this section and before the date on which an application with respect to such drug is submitted under section 512 or 571; and

''(ii) which is carried out under an investigational exemption under section 512(j).

''(B) The term ''manufacturing expenses'' means expenses incurred in developing processes and procedures associated with manufacture of the designated new animal drug which occur after the new animal drug is designated under this section and before the date on which an application with respect to such new animal

drug is submitted under section 512 or section 571.

"(3) There is authorized to be appropriated to carry out this subsection $1,000,000 for the fiscal year following publication of final implementing regulations, $2,000,000 for the subsequent fiscal year and such sums as may be necessary for each fiscal year thereafter.

"(c) EXCLUSIVITY FOR DESIGNATED NEW ANIMAL DRUGS.—

"(1) Except as provided in subsection (c)(2), if the Secretary—

"(A) approves or conditionally approves an application for a designated new animal drug, and no active ingredient (including any salt or ester of the active ingredient) of that designated new animal drug has been approved or conditionally approved previously, the Secretary may not approve or conditionally approve another application submitted for a new animal drug with the same active ingredient and intended use as the designated new animal drug for another applicant before the expiration of ten years from the date of the approval or conditional approval of the application.

''(B) approves or conditionally approves an application for a designated new animal drug, and an active ingredient (including an ester or salt of the active ingredient) of that designated new animal drug has been approved or conditionally approved previously, the Secretary may not approve or conditionally approve another application submitted for a new animal drug with the same active ingredient and intended use as the designated new animal drug for another applicant before the expiration of seven years from the date of approval or conditional approval of the application.

''(2) If an application filed pursuant to section 512 or section 571 is approved for a designated new animal drug, the Secretary may, during the 10-year or 7-year exclusivity period beginning on the date of the application approval or conditional approval, approve or conditionally approve another application under section 512 or section 571 for such drug for such minor use or minor species for another applicant if—

''(A) the Secretary finds, after providing the holder of such an approved application notice and opportunity for the submission of

views, that in the granted exclusivity period the holder of the approved application cannot assure the availability of sufficient quantities of the drug to meet the needs for which the drug was designated; or

''(B) such holder provides written consent to the Secretary for the approval or conditional approval of other applications before the expiration of such exclusivity period.''.

(e) CONFORMING AMENDMENTS.—

(1) Section 201(u) of the Federal Food, Drug, and Cosmetic Act is amended by striking ''512'' and inserting ''512, 571''.

(2) Section 201(v) of the Federal Food, Drug, and Cosmetic Act is amended by inserting the following after paragraph (2): ''Provided that any drug intended for minor use or use in a minor species that is not the subject of a final regulation published by the Secretary through notice and comment rulemaking finding that the criteria of paragraphs (1) and (2) or of section 108 of Public Law 90–399 have been met is a new animal drug.''

(3) Section 301(e) of the Federal Food, Drug, and Cosmetic Act is amended by striking

''512(a)(4)(C), 512(j), (l) or (m)'' and inserting ''512(a)(4)(C), 512(j), (l) or (m), 572(i).''

(4) Section 301(j) of the Federal Food, Drug, and Cosmetic Act is amended by deleting ''520'' and inserting ''520, 571, 572, 573.''

(5) Section 502 of the Federal Food, Drug, and Cosmetic Act is amended by adding at the end the following new subsection:

''(u) If it is a new animal drug—

''(1) that is conditionally approved under section 571 and its labeling does not conform with the approved application or section 571(f), or that is not conditionally approved under section 571 and its label bears the statement set forth in section 571(f)(1)(A); or

''(2) that is indexed under section 572 and its labeling does not conform with the index listing under section 572(e) or 572(h), or that has not been indexed under section 572 and its label bears the statement set forth in section 572(h).''.

(6) Section 503(f) of the Federal Food, Drug, and Cosmetic Act is amended by—

(A) in paragraph (1)(A)(ii) by striking ''512'' and inserting ''512, a conditionally-ap-

proved application under section 571, or an index listing under section 572''; and

(B) in paragraph (3) by striking ''section 512'' and inserting ''sections 512, 571, or 572''.

(7) Section 504(a)(1) of the Federal Food, Drug, and Cosmetic Act is amended by striking ''512(b)'' and inserting ''512(b), a conditionally-approved application filed pursuant to section 571, or an index listing pursuant to section 572''.

(8) Sections 504(a)(2)(B) and 504(b) of the Federal Food, Drug, and Cosmetic Act are amended by striking ''512(i)'' each place it appears and inserting ''512(i), or the index listing pursuant to section 572(e)''.

(9) Section 512(a) of the Federal Food, Drug, and Cosmetic Act is amended by striking paragraphs (1) and (2) and inserting the following:

''(1) A new animal drug shall, with respect to any particular use or intended use of such drug, be deemed unsafe for purposes of section 501(a)(5) and section 402(a)(2)(C)(ii) unless—

''(A) there is in effect an approval of an application filed pursuant to subsection (b) with respect to such use or intended use of such drug, and such

drug, its labeling, and such use conform to such approved application;

''(B) there is in effect a conditional approval of an application filed pursuant to section 571 with respect to such use or intended use of such drug, and such drug, its labeling, and such use conform to such conditionally-approved application; or

''(C) there is in effect an index listing pursuant to section 572 with respect to such use or intended use of such drug in a minor species, and such drug, its labeling, and such use conform to such index listing.''

A new animal drug shall also be deemed unsafe for such purposes in the event of removal from the establishment of a manufacturer, packer, or distributor of such drug for use in the manufacture of animal feed in any State unless at the time of such removal such manufacturer, packer, or distributor has an unrevoked written statement from the consignee of such drug, or notice from the Secretary, to the effect that, with respect to the use of such drug in animal feed, such consignee (i) holds a license issued under subsection (m) and has in its possession current approved labeling for such drug in animal feed; or (ii) will, if the consignee is not a user of the drug, ship such drug only to a holder of a license issued under subsection (m).

''(2) An animal feed bearing or containing a new animal drug shall, with respect to any particular use or intended use of such animal feed be deemed unsafe for purposes of section 501(a)(6) unless—

''(A) there is in effect—

''(i) an approval of an application filed pursuant to subsection (b) with respect to such drug, as used in such animal feed, and such animal feed and its labeling, distribution, holding, and use conform to such approved application;

''(ii) a conditional approval of an application filed pursuant to section 571 with respect to such drug, as used in such animal feed, and such animal feed and its labeling, distribution, holding, and use conform to such conditionally-approved application; or

''(iii) an index listing pursuant to section 572 with respect to such drug, as used in such animal feed, and such animal feed and its labeling, distribution, holding, and use conform to such index listing; and

''(B) such animal feed is manufactured at a site for which there is in effect a license issued pursuant

to subsection (m)(1) to manufacture such animal feed.''.

(10) Section 512(b)(3) of the Federal Food, Drug, and Cosmetic Act is amended by striking ''under paragraph (1) or a request for an investigational exemption under subsection (j)'' and inserting ''under paragraph (1), section 571, or a request for an investigational exemption under subsection (j)''.

(11) Section 512(d)(4) of the Federal Food, Drug, and Cosmetic Act is amended by striking ''have previously been separately approved'' and inserting ''have previously been separately approved pursuant to an application submitted under section 512(b)(1)''.

(12) Section 512(f) of the Federal Food, Drug, and Cosmetic Act is amended by striking ''subsection (d), (e), or (m)'' and inserting ''subsection (d), (e), or (m), or section 571(c), (d), or (e)''.

(13) Section 512(g) of the Federal Food, Drug, and Cosmetic Act is amended by striking ''this section'' and inserting ''this section, or section 571''.

(14) Section 512(i) of the Federal Food, Drug, and Cosmetic Act is amended by striking ''subsection (b)'' and inserting ''subsection (b) or section 571'' and by inserting ''or upon failure to renew a

conditional approval under section 571'' after ''or upon its suspension''.

(15) Section 512(l)(1) of the Federal Food, Drug, and Cosmetic Act is amended by striking ''subsection (b)'' and inserting ''subsection (b) or section 571''.

(16) Section 512(m)(1)(C) of the Federal Food, Drug, and Cosmetic Act is amended by striking ''applicable regulations published pursuant to subsection (i)'' and inserting ''applicable regulations published pursuant to subsection (i) or for indexed new animal drugs in accordance with the index listing published pursuant to section 572(e)(2) and the labeling requirements set forth in section 572(h)''.

(17) Section 512(m)(3) of the Federal Food, Drug, and Cosmetic Act is amended by inserting ''or an index listing pursuant to section 572(e)'' after ''subsection (i)''.

(18) Section 512(p)(1) of the Federal Food, Drug, and Cosmetic Act is amended by striking ''subsection (b)(1)'' and inserting ''subsection (b)(1) or section 571(a)''.

(19) Section 512(p)(2) of the Federal Food, Drug, and Cosmetic Act is amended by striking

''subsection (b)(1)'' and inserting ''subsection (b)(1) or section 571(a)''.

SEC. 4. INTERNAL REVENUE CODE AMENDMENTS.

(a) The Internal Revenue Code of 1986 is amended by adding the following new section after section 45C:

''SEC. 45D. SAFETY AND EFFECTIVENESS TESTING EXPENSES FOR DESIGNATED NEW ANIMAL DRUGS FOR MINOR USES AND MINOR SPECIES.

''(a) For purposes of section 38, the credit determined under this section for the taxable year is an amount equal to 50 percent of the qualified safety and effectiveness testing expenses for the designated new animal drug for the taxable year.

''(b) For purposes of this section—

''(1) Qualified safety and effectiveness testing expenses—

''(A) Except as otherwise provided in this paragraph, the term 'qualified safety and effectiveness testing expenses' means the amounts which are paid or incurred by the taxpayer during the taxable year which would be described in subsection (b) of section 41 if such subsection were applied with the modifications set forth in subparagraph (B).

"(B) For purposes of subparagraph (A), subsection (b) of section 41 shall be applied—

"(i) by substituting 'safety and effectiveness testing' for 'qualified research' each place it appears in paragraphs (2) and (3) of such subsection; and

"(ii) by substituting '100 percent' for '65 percent' in paragraph (3)(A) of such subsection.

"(C) The term 'qualified safety and effectiveness testing expenses' shall not include any amount to the extent such amount is funded by any grant, contract, or otherwise by another person (or any governmental entity).

"(D) For purposes of this paragraph—

"(i) section 41 shall be deemed to remain in effect for periods after June 30, 2001; and

"(ii) the 'trade or business of the taxpayer' requirement of section 41(b)(1) shall be deemed to be satisfied in the case of a taxpayer that owns animals that are the subject of safety and effectiveness testing.

''(2)(A) The term 'safety and effectiveness testing' means any safety and effectiveness testing—

''(i) which is carried out under an exemption for a new animal drug being tested for minor use or a minor species under section 512(j) of the Federal Food, Drug, and Cosmetic Act (or regulations issued under such section);

''(ii) which occurs—

''(I) after the date such new animal drug request is filed for designation under section 573 of such Act, and

''(II) before the date on which an application with respect to such drug is approved under section 512(c) of such Act; and

''(iii) which is conducted by or on behalf of—

''(I) the taxpayer who applied for the designation under section 573; or

''(II) the owner of the animals that are the subject of safety and effectiveness testing.

''(B) Safety and effectiveness testing shall be taken into account under subparagraph (A) only to

the extent such testing is related to the use of a new animal drug for the minor use or minor species for which it was designated under section 573 of the Federal Food, Drug, and Cosmetic Act.

''(c)(1) Except as provided in paragraph (2), any qualified safety and effectiveness testing expenses for a taxable year to which an election under this section applies shall not be taken into account for purposes of determining the credit allowable under section 41 for such taxable year.

''(2) Any qualified safety and effectiveness testing expenses for any taxable year which are qualified research expenses (within the meaning of section 41(b)) shall be taken into account in determining base period research expenses for purposes of applying section 41 to subsequent taxable years.

''(d)(1) For purposes of this section, the term 'minor use' is defined in section 201(mm) of the Federal Food, Drug, and Cosmetic Act and 'minor species' is defined in section 201(ll). Determinations under the preceding sentence with respect to any new animal drug shall be made on the basis of the facts and circumstances as of the date such new animal drug is designated under section 573 of the Federal Food, Drug, and Cosmetic Act.

''(2) No credit shall be allowed under this section with respect to any safety and effectiveness testing conducted by a corporation to which an election under section 936 applies.

''(3) Rules similar to the rules of paragraphs (1) and (2) of section 41(f) shall apply for purposes of this section.

''(4) This section shall apply to any taxpayer for any taxable year only if such taxpayer elects (at such time and in such manner as the Secretary may by regulations prescribe) to have this section apply for such taxable year.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 38(b) of the Internal Revenue Code is amended—

(A) By deleting ''plus'' at end of paragraph (11);

(B) By deleting the period at the end of paragraph (12) and replacing it with the following: '', plus''; and

(C) By adding the following new paragraph at the end: ''the minor use and minor species new animal drug credit determined under section 45D(a)''.

(2) Section 280C(b) of the Internal Revenue Code is amended—

(A) in paragraph (1), by deleting ''section 45C(b)'' and substituting the following: ''section 45C(b) or 45D(b)''; and

(B) in paragraphs (1) and (2), by deleting ''section 45C'' wherever it appears and substituting the following: ''section 45C or 45D''.

(c) REGULATIONS.—The Secretary of the Treasury shall publish proposed regulations to implement amendments to the Internal Revenue Code made by this Act within 6 months of the date of enactment, and final regulations within 24 months of the date of enactment.

SEC. 5. REGULATIONS.

Not later than 18 months after the date of enactment of this Act, the Secretary of Health and Human Services shall issue proposed regulations to implement section 572 of the Federal Food, Drug, and Cosmetic Act (as added by this Act), and not later than 36 months after the date of enactment of this Act, the Secretary shall issue final regulations implementing such amendments. Not later than 12 months after the date of enactment of this Act, the Secretary of Health and Human Services shall issue proposed regulations to implement section 573 of the Federal Food, Drug, and Cosmetic Act (as added by this Act), and not later than 24 months after the date of enactment of this Act, the Secretary shall issue final regulations im-

plementing such amendments; provided that these timeframes shall be extended by 12 months for each fiscal year in which the funds authorized to be appropriated by this Act are not in fact appropriated. The Secretary shall implement section 571 of the Federal Food, Drug, and Cosmetic Act (as added by this Act) on the date of enactment of this Act and subsequently publish any needed implementing regulations.

SEC. 6. OFFICE OF MINOR USE AND MINOR SPECIES ANIMAL DRUG DEVELOPMENT.

The Secretary of Health and Human Services shall establish within the Center of Veterinary Medicine (of the Food and Drug Administration), an Office of Minor Use and Minor Species Animal Drug Development that reports directly to the Director of the Center for Veterinary Medicine. This office shall be responsible for overseeing the development and legal marketing of new animal drugs for minor uses and minor species. There is authorized to be appropriated to carry out this subsection $1,200,000 for fiscal year 2002 and such sums as may be necessary for each fiscal year thereafter.

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